

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: April 3, 2006

DEPT. 71

REPORTER:

CSR#:

**HON. RONALD S. PRAGER,
JUDGE PRESIDING**

REPORTER'S ADDRESS:

P. O. Box 128

San Diego, CA 92112-4104

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BAILIFF:

Judicial Council
Coordination Proceedings
No. JCCP 4041

Coordination Proceeding
Title [Rule 1550(b)]
TOBACCO CASE

U.S. SMOKELESS TOBACCO-JUDGEMENT ON THE PLEADINGS

The Motion for Judgment on the Pleadings filed on behalf of Defendant U.S. Smokeless Tobacco Company (hereinafter "US Smokeless") is hereby DENIED.

Preliminarily, the Court grants U.S. Smokeless' Request for Judicial Notice relative to the "Tobacco Industry Settlement Brand Name Sponsorship Restrictions" published by the CA AG's office to the extent that it seeks judicial notice of the existence of the document. The Court denies US Smokeless' Request for Judicial Notice to the extent that it seeks judicial notice of its contents as the brochure's contents does not constitute "facts and propositions not reasonably subject to dispute." [Evid. Code, §452(h).]

In ruling on a motion for judgment on the pleadings, no extrinsic evidence is considered. The Court does not determine whether the allegations, which must be construed liberally in favor of the pleader, are likely to be proven but whether they preclude liability. [See *Garton v. Title Ins. & Trust Co.* (1980) 106 Cal App 3d 365.] .] "...[C]omplaints which show some right to relief are held sufficient against [a motion for judgment on the pleadings] – even though the facts are not clearly stated; or are intermingled with irrelevant matters; or the plaintiff has demanded relief to which he is not entitled [under the facts alleged]." [California Practice Guide, Civil Procedure Before Trial, 7:125, citing *Gressley v. Williams* (1961) 193 Cal.App.2d 636, 639.]

Defendant's Motion is denied as to the first cause of action. Relative to the phrase "paid participants or contestants," the Court finds that the term "paid" modifies "participant" but does not modify "contestants." The plain meaning of the term "contestant" is "one who takes part in a contest." [See Webster's Unabridged Dictionary.] This interpretation gives effect to the intent of the STMSA, while US Smokeless' interpretation would lead to an absurd result as it would allow

it to sponsor its Tobacco brand name events with an unlimited number of Youth contestants, so long as the Youth are not paid. Furthermore, US Smokeless' interpretation would make carrying out the terms of the STMSA difficult if not impossible since neither US Smokeless nor the AG would know whether a sponsorship were allowed until after a Youth contestant had competed and won money or other prizes, or obtained a sponsor.

Defendant's Motion is also denied as to the fifth cause of action. Section II(h) of the STMSA defines "one Brand Name Sponsorship" as follows: "Sponsorship of a single national or multi-state series or tour (for example NASCAR (including any number of NASCAR races)), or one or more events within a single national or multi-state series or tour, or of an entrant, participant, or team taking part in events sanctioned by a single approving organization (e.g., NASCAR or CART)." The Court cannot determine as a matter of law at this stage of the proceedings whether or not the NHRA Skoal Showdown and NHRA Sport Compact Events each constitute a "single national or multi-state series or tour." [FAC, ¶¶ 84-85.] Similarly, although CA admits in paragraph 27 that "[t]he NHRA is an 'approving organization' as the term is used in STMSA section II(h)," the Court cannot determine as a matter of law at this stage of the proceedings whether or not the NHRA Top Fuel Funny Car and the NHRA Top Fuel Dragster each constitute "an entrant, participant, or team." [FAC, ¶¶ 84-85.] In ruling on a motion for judgment on the pleadings, the Court must assume the truth of Plaintiff's allegations, and as CA has alleged that the "sponsorships" listed in paragraphs 84 and 85 "constituted more than one Brand Name Sponsorship in the States in the twelve-month period[s]," the Court hereby denies Defendant's Motion.

In light of the fact that the motion relative to the remaining causes of action is dependent on the Court granting the motion as to the first and fifth causes of action, Defendant's Motion for Judgment on the Pleadings is hereby denied in its entirety.

Finally, the Court has not ruled on CA's "objections" to portions of Defendant's Memorandum of Points and Authorities as its contents does not constitute evidence to which objections may be properly raised.

IT IS SO ORDERED.